

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CA06-701

ALLEN BULLINGTON AND AARON
MATTHEWS

APRIL 11, 2007

APPELLANTS

V.

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CV-2005-788]

RED ROPER CLUB, LTD, D/B/A
ELECTRIC COWBOY OF FORT
SMITH, PATRICIA LEIGH DYE,
JUSTIN DYE AND MLT
MANAGEMENT, INC.

HON. J. MICHAEL FITZHUGH,
JUDGE

APPELLEES

AFFIRMED

This case involves appellants' second attempt to appeal from an order of the Sebastian County Circuit Court granting, on the grounds of res judicata, the motion to dismiss of appellee Red Roper Club, Ltd., d/b/a Electric Cowboy of Fort Smith. We affirm.

Appellants Allen Bullington and Thomas Matthews filed a complaint on June 19, 2003, alleging that on April 26, 2003, they were assaulted and stabbed by Patricia Dye, Justin Dye, or Mauntry Samountry outside of appellee nightclub, Red Roper Club. Appellants' complaint named as defendants Red Roper Club, Patricia Dye, Justin Dye, and Mauntry Samountry.

On May 10, 2005, the circuit court entered an order granting appellants' motion to dismiss Samountry from the case without prejudice. On June 7, 2005, the circuit court granted Red Roper's motion for summary judgment and dismissed the complaint as to Red

Roper. On June 16, 2005, the circuit court granted appellants' motion to dismiss the case against all remaining defendants. Pursuant to a motion for entry of final judgment filed by Red Roper, the circuit court issued a Rule 54(b) certificate on June 30, 2005, stating that the judgment entered of record on June 7, 2005, "shall be a final judgment for all purposes." Appellants filed a notice of appeal on July 7, 2005, from the June 7, 2005, order. In this opinion, we refer to this case as the first lawsuit.

On June 23, 2005, appellants filed, as a new case, another complaint against Red Roper, Patricia Dye, Justin Dye, and MLT Management, Inc. The circuit court granted Red Roper's motion to dismiss that complaint on the grounds of res judicata on July 22, 2005, accompanied by a Rule 54(b) certificate. Appellants filed a notice of appeal from the July 22, 2005, order on August 4, 2005. We refer to this case as the second lawsuit.

On October 26, 2005, we granted appellants' motion to consolidate the two appeals, designating the docket number for the combined cases as CA05-791. In an opinion handed down in CA05-791 on February 15, 2006, we dismissed the appeal of the first lawsuit without prejudice for lack of a final order, finding the 54(b) certificate deficient for failure to state adequately why there was no "just reason to delay the appeal." We failed to make a disposition of the appeal from the second lawsuit and mentioned it only in a footnote, stating that appellants had filed another lawsuit that had been dismissed on res-judicata grounds and appealed to this court. We noted the different court of appeals' docket number of the appeal in the second lawsuit but did not mention that the appeals had been consolidated. However, notwithstanding our failure to note that the first and second lawsuits had been consolidated

on appeal as CA05-791, our dismissal of the first lawsuit in CA05-791 on February 15, 2006, and the clerk's issuance of the mandate on March 7, 2006, had the effect of also terminating the appeal of the second lawsuit.

Following our decision on February 15, 2006, in CA05-791, appellants filed a motion in circuit court in the second lawsuit for reconsideration of the circuit court's entry of summary judgment in favor of Red Roper. The circuit court denied appellant's motion on March 24, 2006, noting that it had not granted summary judgment but had, instead, granted a motion to dismiss appellants' second lawsuit as to Red Roper on grounds of res judicata. On May 9, 2006, the circuit court entered an order granting appellants' motion in the second lawsuit for an entry of final judgment and also issued a Rule 54(b) certificate.

Appellants have filed the present appeal. The record contains a notice of appeal in the second lawsuit dated May 12, 2006, stating that appellants are appealing from an order entered on July 22, 2005, which is the order dismissing the second lawsuit as to Red Roper on grounds of res judicata. Nothing in the record indicates that any action has been taken in the first lawsuit since our February 15, 2006, decision in CA05-791 dismissing appellants' appeal of that lawsuit, and no new notice of appeal has been filed relating to any action that may have been taken by the circuit court in the first lawsuit. Therefore, in the present (third) appeal we have jurisdiction to consider only issues raised in the second lawsuit since our February 15, 2006, decision in CA05-791.

However, appellants' one point on appeal and the only arguments in their brief pertain to the circuit court's alleged errors in the first lawsuit. Appellants have not made any

arguments that the circuit court erred in dismissing the second lawsuit on res-judicata grounds. As explained above, appellants have not brought a proper appeal of the first lawsuit; therefore, the alleged errors in that case are not now before us. As it is not the duty of this court to make appellants' arguments for them, we must affirm. *See, e.g., Childs v. State*, 95 Ark. App. 343, ____ S.W.3d ____, (2006).

Affirmed.

GLADWIN and VAUGHT, JJ., agree.